



## Supported Decision Making and Dignity of Risk Policy

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Revision	Date	Amended By	Details of Amendment
0	Dec-21	Karen Reid	Update to New Template
1	May 2023	Gavin Pitman	Review and added Dignity of Risk

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## 1. Purpose

The purpose of this document is to provide Valued Lives Foundation (VLF) Workers guidance when supporting people with disability to make decisions about their own life.

VLF acknowledges that all people have a human right to make decisions about their own life and to have those decisions respected. VLF understands and affirms that cognitive impairment is not a reason for a person to be excluded from the decision-making process about their own life.

VLF understands that not all decisions require assistance, and will support people primarily when they make significant decisions which have immediate or long-term consequences regarding their health, finances or lifestyle.

VLF is committed to supporting people to make their own decisions regarding their life.

The will and preferences of a person will only be overridden if a decision is deemed by family members, representatives, Workers or advocates to be dangerous to the wellbeing of the person or others.

## 2. Scope

This policy applies to all VLF Workers, Board members, volunteers and contractors engaged by VLF (collectively referred to as 'Workers').

## 3. Definitions

**Decision** is a planned course of action, either short or long term, regarding the lifestyle, healthcare or financial affairs of a person.

**Dignity of risk** is the recognition that every person should be able to do something that has a level of risk involved, whether real or perceived.

**Financial Decisions** include but are not limited to:

- Investment decisions
- Sale or gifts of property or valuable possessions
- Use of money.

**Functional Capacity Assessment** is an assessment of a person's decision-making capacity in the present moment. The assessment should focus on the person's understanding of the decision, its context and consequences, and should not contain a judgement on whether a person's decision is wise or unwise.

**Healthcare Decisions** include but are not limited to:

- Seeking or obtaining a diagnosis
- Accessing (or refusing) care services
- Responding to crisis (falls, incidents)
- Agreeing or refusing medical treatment
- Advance care planning.

**Lifestyle Decisions** include but are not limited to:

- Living arrangements
- Relationships
- Employment
- Civic participation
- Holidays and outings
- Pets and possessions.

**Representative** is a person or organisation that assists the person with disability in the decision-making process and, where necessary, makes decisions on their behalf. A Representative is designated by a person, or by appointment from another body if the person with disability is unfit to nominate a Representative, and includes a Substitute Decision Maker.

**Substitute Decision Maker (guardian)** is a legally appointed person such as a guardian to make decisions on behalf of a person with disability in certain areas, for example Healthcare Decisions and Lifestyle Decisions, or a financial manager to make Financial Decisions. A Substitute Decision Maker should work with a person's informal support networks to support the person to build their decision-making capacity.

**Substituted Judgement** is a decision made by a Representative regarding a person with disability who is unable to communicate their will and preferences, or when the person's will and preferences infringe on their rights or the rights of others. A Substituted Judgement is based on the person's previous expressed will and preferences or, if this is unknown, a Representative's interpretation of 'what the person would have wanted'.

**Supporter** is a person or organisation who is designated by the person with disability or organisation to aid in the communication and development of the person's wishes regarding their care. Supporters may be required to aid in the decision-making process, however the ultimate decision-making power lies with the person themselves.

#### 4. Procedures

##### Communication of this policy

People with disability will be provided with access to the support necessary for them to make, communicate and participate in decisions regarding their life and care. People should be provided with an Easy English format of this policy, and be supported to understand it.

Workers will receive information and training on the nature of capacity in decision-making, how to assess capacity, and how to support a person's decision-making that upholds the person's rights.

##### Designating the role of Supporters and Representatives

Supporters and Representatives should be designated by or with the consent of the person with disability, and their roles can be formalised into a written decision-making agreement.

To avoid conflicts of interest, Supporters and Representatives should preferably not be in a position where they have interests in VLF or any other service provider delivering supports and services to the person, as this may compromise their role. Where this is unavoidable, the written supported decision-making agreement should include a declaration of any conflicts of interest if they exist, and specify how actual or potential conflicts will be managed.

Supported decision-making should occur in collaboration with informal support networks such as friends, family, peer support and independent advocates. This will help to create a natural

safeguard for the person and prevent Supporters from making decisions which are not in the person's best interests.

### **Functional approach to assessing a person's decision-making capacity**

When an assessment of a person's decision-making capacity is required, a functional approach will be used by a practitioner, focused on assessing the person's understanding of the context and consequences of each specific decision which may be made. Each decision should be assessed separately, with the person's ability to understand the nature of the decision as the central focus. Assessment should also consider the ability for capacity to change, dependent on the context of the assessment, and other factors such as cognitive improvement or decline.

### **Assessing decision-making capacity**

Workers will give consideration to the context in which a Functional Capacity Assessment takes place, such as the time and place of the assessment being comfortable and familiar to the person. The person must provide consent prior to an assessment taking place by a practitioner.

All assessments will be based on:

- Previous decisions made by the person
- The person's understanding of the context, choices, risks and consequences related to the decision
- How far the decision deviates from conventional social norms.

If it is determined that the person is unfit to make a decision regarding their life, their will and preferences will be overridden and a Substituted Judgement will be made.

People will only receive a Substituted Judgement or have their will and preferences overridden if:

- They cannot understand any of the risks associated with their decisions
- The proposed decision presents a threat to the wellbeing of the person or others.

### **Supporting decision-making**

The current or previously expressed will and preferences of the person will be respected and carried out unless they are unlawful, or compromise other rights such as their right to safety, or the rights of others.

In the process of supporting a person's decision:

1. A person's will and preference should be respected and given effect

If will and preference are not known:

2. The Representative(s) must make a decision on what the person would likely want, based on the information available.

If it is not possible to determine what the person would likely want:

3. The Representative(s) must act to preserve the person's human rights and make the least restrictive decisions in regard to those rights.

Where people with disability require assistance in the communication of their will and preference, VLF will provide the appropriate tools and strategies for the person to express themselves. This may include use of pictures, assistive technology or language services.

Workers will support and assist people to understand the context and consequences of their decisions.

Workers will work proactively with people to establish social histories, life-story work and care plans as documentation which might assist in future decision-making scenarios.

### **Dignity of risk**

Supporters will respect a person's right to the dignity of risk and will not dissuade them from making a decision based on the associated risks alone, whether real or perceived.

If a person's decision involves some level of risk, Supporters should ensure that the person can foresee and understand the risks associated with the decision. Workers will attempt to manage the risks associated with significant decisions, while not attempting to change the person's mind regarding a decision.

### **Process for dealing with perceived conflict of interest**

If a Worker believes someone in the person's support network is not acting in the best interests of the person, the VLF Manager is to be notified as soon as possible.

If required, matters involving the abuse of Representative decision-making will be referred to the Office of the Public Advocate.

### **Documentation**

For Substituted Judgements that may have significant immediate and long-term consequences, the decision-making process and outcome will be documented and will be stored in the person's individual record in Brevity.

## **5. Related documents**

Conflict of Interest Policy

Conflict of Interest (NDIS Providers) Policy